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10/699,824	11/04/2003	Ralph S. Hoefelmeyer	COS-02-008	4440
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			ART UNIT 2446	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: RALPH S. HOEFELMEYER and SHAWN E. WIEDERIN

Application No. 10/699,824
Technology Center 2400

Mailed: July 13, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on June 8, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention.

APPEAL BRIEF: SUMMARY OF CLAIMED SUBJECT MATTER

Appellants filed an Appeal Brief, dated November 7, 2008. The Appeal Brief is not in compliance with 37 C.F.R. § 41.37(c), effective September 13, 2004.

According to 37 C.F.R. § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter*. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of Claimed Subject Matter”, appearing on pages 2-5 of the Appeal Brief, is deficient because it does not separately map independent claims 1, 12, 24, and 31 to the Specification. Instead, the “Summary of Claimed Subject Matter” contains page and line numbers not found in the Specification, which only has paragraph numbers.

Independent claims must be mapped to page and line numbers in the Specification, or alternatively, to paragraph numbers found in the Specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief

need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- (1) hold the Appeal Brief, filed November 7, 2008 defective, as required by 37 C.F.R. § 41.37(d);
- (2) notify the Appellants to submit a paper, which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 C.F.R. § 41.37(c)(1)(v);
- (3) acknowledge and consider any paper submitted by Appellants to correct the Appeal Brief; and
- (4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/bim

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